United States Court of Appeals

for the

District of Columbia Circuit

TRANSCRIPT OF RECORD

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UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

UNITED STATES OF AMERICA	)	
	)	
vs.	)	CASE NO. 24,884
	)	Criminal No. 1102-69
CHARLES R. CHAMBERS	)	
	)	
Appellant	)	

APPELLANT'S BRIEF

Ernest L. Ruffner, Esq.
Court Appointed Counsel
for Appellant Charles R.
Chambers

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This case has not previously been before this Court.

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STATEMENT OF THE CASE

On April 5, 1969, the appellant, Charles R. Chambers, was arrested in the District of Columbia for violation of 22 District of Columbia Code, Section 1401 (Forgery and Uttering) in connection with the presentation for payment of a certain fradulent bank check.

The case against the appellant went to trial September 28, 1970, upon a six-count indictment charging forgery and uttering with respect to three separate written instruments, all bank checks.

For its case, the Government presented as witnesses the arresting police officers, Conley M. Clayton and James Byrd, as well as Detective Sergeant George Stern of the Check and Fraud Unit, Metropolitan Police Department. In addition, the Government called as witnesses Donald W. Tucker, Nathan Blitzstein, Jefferson McNair and Patricia Steinforth.

Mr. Tucker testified that he conducted a printing buisness and that certain company bank checks, identified by him during the trial, had been stolen from his place of business. (TR 14-15). He further testified that he had not signed the checks nor authorized the appellant to sign them. (TR 18-19).

Nathan Blitzstein, the owner of the Hamilton Liquor Store, testified that the appellant had appeared in his store on March 29, 1969, and requested that he cash a certain check of the Tucker Printing Company made payable to appellant. Mr. Blitzstein cashed the check which was subsequently returned by the bank as having been stolen and forged. (TR 23-24).

Patricia Steinforth identified a certain check of the Tucker Printing Company made payable to appellant as having been processed for payment by her on April 2, 1969 when she was employed as a bank teller at the Security Bank in Washington, D. C. (TR 42). She was unable to identify the appellant nor to recall any of the circumstances of the occasion. (TR 44-45).

In his continuing testimony, Mr. Blitzstein testified that upon return of the forged and stolen check he contacted the Metropolitan Police Department and that on a second occasion a few days after March 29, 1969, the appellant re-appeared in his store and asked that a second check of the Tucker Printing Company made out to appellant be cashed. (TR 25-26). At this time, Mr. Blitzstein contacted the Metropolitan Police Department and officers were dispatched to the store where the appellant was apprehended. (TR 26-27).

The arresting officers took the appellant to the Fourth District Headquarters where he was warned of his right to counsel and privilege against self-incrimination. (TR 80-81). The arresting officers as well as Detective Sergeant Stern questioned the appellant concerning his possession and use of the subject checks. Detective Stern testified that the appellant acknowledged he knew the checks were no good (TR 78) and further elicited from him a written statement, subsequently presented as evidence at the trial, which stated "A man gave me the check and told me that he would make them out to me and I would get half of the money for me for my dope habit, so I did." (TR 80). Appellant subsequently repudiated this statement (TR 120).

During trial a stipulation was entered into by the appellant and the Government whereby it was stipulated that the signature on the reverse side of the check presented for payment at the Security Bank was the genuine signature of the appellant, Charles R. Chambers. (TR 76).

The appellant Chambers testified that he had received the checks in payment for services rendered in making deliveries for the Tucker Printing Company. He stated that he had made deliveries on other occasions and, although he did not know the name of the individual, an employee of Tucker Printing Company gave him the checks in payment for making the deliveries. (TR 89-91). He acknowledged that he had presented the three

checks for payment thinking that they were genuine and that he had made no attempt to conceal his own identity at the time of negotiating the checks. (TR 106-107).

During the course of the trial and prior to the police officers testifying with respect to statements made by the appellant, a hearing was held to determine the admissibility of any incriminating statements which appellant may have made while being interrogated by the police. At the time of the hearing, Detective Stern testified that he had read to the appellant PD Form 47 which informs an individual of his Constitutional privilege against self-incrimination and right to counsel. (TR 80-81). During the course of the trial, there was no evidence presented that the appellant took any affirmative steps to waive his Constitutional rights and privileges.

Detective Stern, subsequent to taking signature exemplars of the appellant, requested that he write a statement as to how he came into possession of the checks and the appellant wrote the aforesaid statement. (TR 80). This written statement was subsequently admitted into evidence as were other incriminating statements made orally by the appellant during the course of his interrogation. (TR 78, 83).

Defense counsel, at the conclusion of the Government's case, moved to have the charges relating to forgery dismissed and the Court reserved action on the motion until the matter had been considered by the jury. (TR 121).

Following closing arguments and the charge to the jury, the jury adjourned for deliberation and on that same day the jury returned a verdict of guilty as charged with respect to all six counts of the indictment. On November 10, 1970, Charles Chambers was sentenced as follows: two (2) years to eight (8) years on each of the six counts of the indictment, said sentences to run concurrently.

On November 10, 1970, Charles Chambers noted a timely appeal to this Court from the judgment of the U. S. District Court of the District of Columbia.

ARGUMENT

A. SIGNING ONE'S OWN GENUINE SIGNATURE FOR PURPOSES OF IDENTIFICATION AND ORIGINAL ENDORSEMENT DOES NOT CONSTITUTE THE CRIME OF FORGERY REGARDLESS OF THE FALSITY OF THE INSTRUMENT ENDORSED

One of the essential elements of the crime of forgery is the false making or altering of a writing.* In the present case the "writings' upon which the charge of forgery was based consisted of three negotiable instruments in the form of bank checks. It was conceded and stipulated to at the time of trial that the extent of appellants participation in the making or altering of these writings consisted of the appellant signing his own genuine signature on the back of each of the subject checks. [TR 52-53, 76] The signature represented not only an endorsement of the instrument, but also served as a means of

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*District of Columbia Code, Section 22-1401. Forgery

Whoever with intent to defraud or injure another, falsely makes or alters any writing of a public or private nature, which might operate to the prejudice of another, or passes, utters, or publishes, or attempts to pass, utter, or publish as true and genuine, any paper so falsely made or altered, knowing the same to be false or forged, with the intent to defraud or prejudice the right of another, shall be imprisoned for not less than one year nor more than ten years.

identification at the time the checks were negotiated. No claim was made nor was any evidence introduced to prove that the appellant participated in any other way in the making or altering of the instruments. Collateral evidence established the falsity of the checks and the appellant was convicted of forgery and of uttering with respect to each of the three separate instruments on the basis of having endorsed and negotiated them.

Under the provisions of Section 22-1401 of the District of Columbia Code, which is written in the disjunctive with regard to the making and passing of false writings, the crimes of forgery and of uttering the same instrument are distinct offenses. [Read vs. United States, 55 App. D.C. 43, 299 F. 918 (1924)] To constitute the crime of forgery three things must exist.

1.] There must be a false making or other alteration of an instrument in writing;

2.] There must be a fradulent intent;

3.] The instrument must be apparently capable of affecting the fraud.

In analyzing what constitutes a "false making" the Courts have consistently held that where there is a genuineness of execution, absent any concealment as to real identity or lack of authority when signing as an agent, the crime of forgery

has not been committed. The Court in the case of Marteny vs. United States, 216 F.2d 760, (10th Cir., 1954) discussed the concept of genuineness as it pertains to the crime of forgery as follows:

> "As used in criminal statutes, the words 'falsely made' and 'forged' are homogeneous, partaking of each other. They have always been synonymously construed to describe a spurious or fictitious making as distinguished from a false or fradulent statement. The words relate to genuineness of execution and not falsity of content."

Although this court has held that the use by an agent of the signature of his principal for an unauthorized purpose constitutes forgery [Yeager vs. United States, 59 App. D.C. 11, 32 F.2d 402 (1929)] and other Courts have held that if a person signs his own name with the intent that it be taken for the signature of another person of the same name, the crime of forgery may have been committed, in the present case, neither of these distinctions is present. The appellant signed the instruments on behalf of himself, with his own signature and no attempt was made to represent that he was anyone other than himself. This is clear from the evidence which established that appellant, at the time he endorsed the instruments, was either personally known to the parties present or was required to and did present his own personal identification. On the two

occasions appellant presented checks at the Hamilton Liquor Store he was known by both the store owner and employee [TR 28-29, 34-35] and he was required to present personal identification at the Security Bank where the third check was negotiated. [TR 44, 106]

Based upon the facts of this case and the scope of this appeal, the Court is called upon to determine whether or not signing a genuine signature to an instrument under the present circumstances constitutes the crime of forgery. It is respectfully submitted that the Supreme Court, in the case of Gilbert vs. United States, 370 U.S. 650, 8 Led 2nd 750, 82 S. Ct. 1399, answered this question with the following language.

> "Where the falsity lies in the representation of facts, not in the genuineness of execution, it is not 'forgery'."

In the recent case of U. S. vs. Gilbert _____ App. D.C. _____, 433 F.2d 1172 this Court cited with approval the criteria set forth in Owen vs. People, Colo., 195 P.2d 953 (1948) with respect to forgery as follows:

> "... to establish falsity in a forgery charge it must be made to appear not only that the person whose name is signed to the instrument did not sign it, but also it must be established by competent evidence that the name was signed by defendant without authority ...".

The facts of this case clearly indicate that the elements of the crime of forgery were not present with respect to the actions of the appellant and therefore the verdict entered as to counts 1, 3 and 5 of the indictment should be set aside.

B. THE COURT ERRED IN ADMITTING INTO EVIDENCE AT TRIAL, INCRIMINATING STATEMENTS OF THE APPELLANT INASMUCH AS THE APPELLANT DID NOT KNOWINGLY AND INTELLIGENTLY WAIVE HIS CONSTITUTIONAL RIGHT TO LEGAL COUNSEL AND PRIVILEGE AGAINST SELF INCRIMINATION PRIOR TO GIVING SAID STATEMENTS

The issue presented here does not concern the substantive sufficiency or timeliness of the so-called Miranda warnings given to appellant prior to questioning by the police. It is respectfully submitted, however, that it is not enough to merely recite these warnings in order to make incriminating statements elicited from a defendant admissible at trial. It must be shown that the defendant both understood and waived the privileges and rights announced in said warning before they are available for use by the prosecution. The criteria which the courts must use in determining whether the defendant actually waived these rights was set forth in the case of Miranda vs. Arizona, 384, U.S. 436 (1966) where the Court stated at page 475:

> "[i]f ... interrogation continues without the presence of an attorney and the statement is taken, a heavy burden rests on the government to demonstrate that the defendant knowingly and intelligently waived his privilege against self-incrimination and his right to retained or appointed counsel." (emphasis added)

The Courts' responsibility in determining whether a defendant has waived his rights and privileges has proved to be difficult to implement and, as a consequence, Courts have

resorted to a detailed review of the circumstances surrounding the giving of the warning itself and the action and response of the defendant in each case. The problems confronting the Court in following this approach and the need for affirmative standards in this situation was set forth in the case of Pettyjohn vs. United States, U.S. App. D.C.-, 419 F2d 651 where the Court stated.

> "We, of course, are unable to and do not endeavor to probe appellant's mind in an attempt to discover whether he made a meaningful waiver. Instead, we must apply an objective standard in determining the proper resolution of this issue."

In applying objective standards the Court has considered several matters to be important and determinative and has referred to them in resolving the issue of admissibility. First of all, there is the question of whether the statement was volunteered or was the result of questioning by an investigating officer. Secondly, the Court has shown concern if there is a claim that a statement was coerced or solicited from a defendant by threats or promises of more lenient treatment. In addition, the Court has considered whether a defendant subsequently repudiated or modified his incriminating statement.

In the present case the defendant's statement was the result of questioning and was not volunteered. [TR 56, 63, 72]

He repudiated it at the time of trial and asserted that he was enduced to make it upon the promise of more lenient treatment. [TR 119-120] Under these circumstances, the Court was required to apply other objective standards in determining that the appellant waived his privilege against self-incrimination and right to counsel thereby permitting into evidence incriminating statements attributed to him.

This determination by the Court brings into clear focus the real issue of this case. There was no meaningful objective basis upon which the court could rely in determining whether or not, prior to making an incriminating statement, the appellant knowingly and intelligently waived his Constitutional rights and privileges.

The evidence was clear that although a warning was given and, according to police testimony, was understood, the appellant never made any affirmative act to show that he waived his rights and privileges. The testimony of the police officers involved in the investigation clearly demonstrates that the appellant made no such affirmative waiver. In this regard, the following testimony of Officer Byrd, one of the investigating officers, is significant with respect to the absence of affirmative waiver. [TR 68-69]

"Q. Did you hear Officer Clayton advise the defendant of his rights?

A. Yes, sir.

Q. Did you hear him ask him if he wanted counsel or a lawyer to be present?

A. Yes, sir.

Q. What did the defendant say in response to that?

A. Sir, the defendant was read the PD Form 47 and asked if he understood his rights. He acknowledged the fact that he understood his rights.

Q. He did not want an attorney?

A. Pardon.

Q. Did he say that he did or did not want an attorney? Did he waive his right to have an attorney?

A. He acknowledged the fact that he understood his rights.

Q. All right.

THE COURT: I take it to mean that he did not ask for an attorney.

BY MR. BADGER:

He did not insist on having an attorney present before he made the statement.

The only thing I remember is that he understood his right."

It is apparent, therefore, that the Court's rationale in finding a valid waiver was based solely upon the failure of the defendant to secure his rights and privileges by affirmative act. Understanding that this is an area of the law which, although often considered, has resulted in an absence of any truly meaningful guidelines, it is the position of appellant that in order to disspell any and all doubts concerning the validity of a waiver there should be some affirmative act of waiver on the part of a suspect before a waiver can be affected.

In this regard, the Court, itself, has expressed its apparent concern with this area of the law by referring to the 'murky waters that surround meaningful waivers.' [Pettyjohn vs. United States, -U.S. App. D.C.-, 419 F.2d 615] To clear these murky waters, it is urged that a reasonably simple, easily recognizable standard should be required whereby a presumption is raised that a suspect has not waived his rights unless some affirmative act is taken on his part to establish such a waiver. As the court stated in Miranda vs. Arizona, 384 U.S. 436 at page 475.

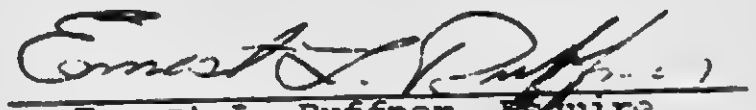
> "Presuming waiver from a silent record is impermissible. The record must show, or there must be an allegation and evidence which show, that an accused was offered counsel but intelligently and understandingly rejected the offer. Anything less is not waiver."

In the present case, the appellant made no affirmative act of waiver and was not even requested to sign a waiver card, although the investigating officers were interested in obtaining a handwriting sample of his signature because of the pending forgery charge. This type of situation calls for the institution of some objective test other than the mere recollection of the police officers as to the conduct of the suspect and their actions at the time of investigation. Such recollections are often vague and even incorrect as in the present case, for example, where Officer Stern originally took the position that he had requested no statement from the appellant and then subsequently, upon recall, changed his testimony and stated that he had requested such a statement. [TR 71-72]

Inasmuch as confusion results from anything less than an affirmative act on the part of a suspect in waiving his rights, it is submitted that in the absence of such an affirmative act there is an insufficient showing of waiver. Under the circumstances of this case the "heavy burden" of establishing a waiver has not been met and it was error to admit into evidence the incriminating statements of the appellant.

CONCLUSION

Based on the foregoing Statement of the Case, Authorities, and Argument, appellant respectfully urges this Court to reverse the verdict against Charles R. Chambers in the United States District Court for the District of Columbia and dismiss the case against Charles R. Chambers as prosecuted by the United States of America.



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BRIEF FOR APPELLEE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 24,884

UNITED STATES OF AMERICA, APPELLEE

v.

CHARLES R. CHAMBERS, APPELLANT

Appeal from the United States District Court
for the District of Columbia

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United States Attorney.

JOHN A. TERRY,
WILLIAM S. BLOCK,
LEONARD W. BELTER,
Assistant United States Attorneys.

Cr. No. 1102-69

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OTHER REFERENCES

* Cases chiefly relied upon are marked by asterisks.

ISSUES PRESENTED *

In the opinion of appellee, the following issues are presented:

I. Whether signing one's own signature with specific intent to defraud, as an endorsement in blank of a false but apparently valid check, constitutes the crime of forgery under 22 D.C. Code § 1401?

II. Whether the trial court erred in finding that appellant made a genuine knowing waiver of his rights prior to his making the statements which were introduced in evidence against him?

* This case has not previously been before this Court.

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 24,884

UNITED STATES OF AMERICA, APPELLEE

v.

CHARLES R. CHAMBERS, APPELLANT

Appeal from the United States District Court for the District of Columbia

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BRIEF FOR APPELLEE

COUNTERSTATEMENT OF THE CASE

Appellant was indicted on July 15, 1969, for burglary in the second degree, petit larceny, forgery and uttering. On September 28, 1970, he went to trial on six counts of the original fourteen-count indictment. Three of these six counts charged him with forgery and three with uttering a forged instrument, all in violation of 22 D.C. Code § 1401. The next day the jury found him guilty on all six counts. On November 10, 1970, appellant was sentenced to concurrent terms of imprisonment of two to six years on each count. From that conviction he appeals.

Mr. Donald Tucker testified that he conducted a printing business and that certain company bank checks, identified by him, had been stolen from a book of blank checks kept by him at his place of business (Tr. 14-15). He further testified that he had not signed the checks, nor had he authorized appellant to sign them (Tr. 18-19).

Nathan Blitzstein, the owner of the Hamilton Liquor Store, testified that appellant had appeared in his store on March 29, 1969, and requested that he cash a certain check of the Tucker Printing Company made payable to the order of appellant. Appellant endorsed this check in blank in Mr. Blitzstein's presence. Mr. Blitzstein cashed the check, which was subsequently returned by the bank as having been stolen and forged (Tr. 23-24). Several days later appellant reappeared in Mr. Blitzstein's store seeking to cash a second check of the Tucker Printing Company, also payable to the order of appellant. Mr. Blitzstein contacted the police, and officers were dispatched to the store. The check had already been endorsed. Appellant endorsed it again in Mr. Blitzstein's presence and was arrested (Tr. 26-27).

Miss Patricia Steinforth identified a certain check of the Tucker Printing Company, payable to the order of appellant, as having been processed for payment by her on April 2, 1969, when she was employed as a teller at the Security Bank (Tr. 42). She was unable to identify appellant, however, nor could she recall any of the circumstances of the transaction (Tr. 44-45). A stipulation was entered into that the signature on the reverse of this check was the genuine signature of appellant (Tr. 76).

All three checks (Government exhibits Nos. 2, 4 and 5) were among those identified by Mr. Tucker, and all three were endorsed in blank.

During the course of the trial a hearing was held to determine the admissibility of any statements appellant may have made to police officers after his arrest. Officer Conley Clayton was the one who initially advised appellant of his rights (Tr. 62), and appellant acknowledged

that he understood his rights (Tr. 68-69). Officer Clayton also afforded appellant the opportunity to call an attorney (Tr. 63). Appellant did not call an attorney, but he did make a telephone call to a personal friend (Tr. 66).

Thereafter Detective George Stern interviewed appellant. Detective Stern warned appellant of his rights by reading to him Form PD-47, a standard police department form (Tr. 57). Detective Stern asked appellant whether he understood his rights, and appellant again acknowledged that he did (Tr. 58). Appellant then responded orally to a question by Detective Stern concerning his possession of the checks and his knowledge of their validity (Tr. 56-57). He said that an unknown person gave him the checks and that he knew they were bad. He was then asked to write out a statement as to how he came into posession of the checks; his written statement became Government exhibit No. 8 (Tr. 72).

Appellant was arrested at approximately 7:00 p.m. on April 5, 1969, and his written statement was completed and witnessed by Detective Stern at 8:30 p.m. (Tr. 72). Appellant's general physical state during this time was normal (Tr. 73-74). No promises of any kind were made to induce appellant to make a statement (Tr. 73).

The trial court on this evidence (appellant did not testify) found that appellant's statement was voluntarily given without duress or coercion and that he had made a genuine and knowing waiver of his rights (Tr. 75). Appellant's oral statement to Detective Stern and his written statement were both admitted into evidence (Tr. 78-80).

Appellant testified that he had received the checks in payment for services rendered in making deliveries for the Tucker Printing Company. Each check was for an amount between $80 and $90, and each check, according to appellant, was compensation for making a single delivery (Tr. 108-109). Appellant did not know the name of the individual, allegedly an employee of Tucker Printing Company, who gave him the checks (Tr. 91). He

would go back after making a delivery and meet this individual on the corner and receive a check (Tr. 93). Appellant acknowledged presenting all the checks he had received for payment, but he testified that he thought they were genuine (Tr. 106-108).

Appellant denied ever admitting to Detective Stern that he knew the checks were bad (Tr. 118). Appellant admitted making the written statement concerning his possession of the checks but claimed that he made it only because Detective Stern promised him that the matter would stay in the "small court" (Tr. 119).

ARGUMENT

I. Signing one's own signature with specific intent to defraud, as an endorsement in blank of a false but apparently valid check, constitutes the crime of forgery.

A. *The case law recognizes a broad concept of the crime of forgery.*

Various common-law definitions of the crime of forgery[1] are closely akin to the statutory definition involved here.[2] At common law forgery was not limited to signing someone else's name.[3] In fact, the law long ago recognized that signing one's own name could constitute forgery:

> An offender may be guilty of a false making of an instrument, although he sign and execute it in his own name, in case it be false in any material part, and calculated to induce another to give credit to it

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[1] *See Ex parte Hibbs*, 26 F. 421, 432 (D. Ore. 1886).

[2] 22 D.C. Code § 1401 provides in pertinent part:

> Whoever, with intent to defraud or injure another, falsely makes or alters any writing of a public or private nature, which might operate to the prejudice of another . . . shall be imprisoned for not less than one year nor more than ten years.

[3] *Ex parte Hibbs, supra* note 1, 26 F. at 433.

> as genuine and authentic, when it is false, and deceptive. COMMISSIONERS OF THE CRIMINAL LAW, REPORT (1840), quoted in *Ex parte Hibbs*, *supra* note 1, 26 F. at 433.

This broad concept of forgery has found substantial support in modern case law. As appellant points out, many courts have held that it is forgery to sign one's own name intending that it be taken as that of another individual of the same name.[4] This Court has held that it is forgery for an agent to use the signature of his principal for an unauthorized purpose. *Yeager* v. *United States*, 59 App. D.C. 11, 32 F.2d 402 (1929).[5] The Supreme Court, in interpreting a different statute, 18 U.S.C. § 495, held that it was not forgery under that statute for the defendant to sign another's name, followed by his own name as agent, when he was not in fact an agent. *Gilbert* v. *United States*, 370 U.S. 650 (1962). More apposite, however, is another case interpreting the same statute, which held that it *was* forgery to sign one's *own* name to a false instrument, with no intent that the name be taken as that of another individual. *United States* v. *Tomasello*, 64 F. Supp. 467 (E.D. N.Y. 1946), *aff'd*, 160 F.2d 348 (2d Cir. 1947). The clearest indication that forgery is a broadly defined offense was given by this Court in *Lieberman* v. *United States*, 102 U.S. App. D.C. 310, 253 F.2d 46 (1958):

> Forgery by false making has been committed where the accused, with intent to defraud, proffers a blank note to a customer, and induces the cus-

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[4] *See generally* 37 C.J.S. *Forgery* § 9 (1943), and cases cited therein.

[5] Consequently, appellant's reliance on certain language in *United States* v. *Gilbert*, 140 U.S. App. D.C. 66, 433 F.2d 1172 (1970), is misplaced. That language is directed to the specific situation where the accused did sign another's name as maker. The *Gilbert* case stands for the proposition that in such circumstances the government must also prove lack of authority in the defendant to sign as maker. It is clearly inapplicable to appellant's case, where lack of authority to make, use, or even have the instruments in question was established by the testimony of Mr. Tucker.

> tomer to sign it on the false representation that the paper is something other than a note, where the customer is reasonably justified in believing the representation and where the accused later fills in the blanks and negotiates the paper as a note. 102 U.S. App. D.C. at 311, 253 F.2d at 47.

A synthesis of these cases leads to the inescapable conclusion that the fact that an accused has signed a genuine signature cannot absolve him of the crime of forgery. In essence it is the putting of his own signature on what is a false writing, in combination with specific intent to defraud, which constitutes the offense. The specific intent required is not the specific intent to pass oneself off as another (*see* 37 C.J.S. *Forgery*, *supra* note 4, § 9 (1943)), or the specific intent to deceive someone in regard to the scope of one's authority (*Yeager* v. *United States*, *supra*), or the specific intent to deceive someone regarding the nature of the instrument he is signing (*Lieberman* v. *United States*, *supra*), but rather, as stated in the statute, the specific intent to defraud. Each of the cases cited represents a species of the genus forgery. Appellant's case is simply another species within the genus.

B. *The significance of endorsing a check in blank makes clear that appellant violated the statute.*

In deciding whether appellant's endorsement constitutes a false making or other alteration, it is important to grasp the legal significance of his action. In effect there are two separate instruments involved in each transaction in this case. The first instrument is an apparently valid bank check payable to the order of Charles R. Chambers. The second is an apparently valid bank check payable to the order of Charles R. Chambers and endorsed in blank by Charles R. Chambers. These are two significantly different instruments. The first is an instrument which, if genuine, creates a legal liability running from the drawer to Charles R. Chambers alone.

In the instant case it is a false writing. The second is an instrument which, if genuine, creates a legal liability running to the bearer, *whoever he may be.* 28 D.C. Code § 3-204 (2). It is also an instrument that can be negotiated by delivery alone. *Id.* This second instrument is also a false writing, and one which is potentially far more dangerous because of its ease of negotiability. It is materially different from the first instrument, and it is one which appellant himself has made.

The public mischief which the statute is aimed at preventing (*i.e.*, the creation of false writings which might operate to prejudice another) is present in a greater degree in the case of a bank check payable to order and then endorsed in blank than in the case of a bank check payable to order. We submit that the statute was aimed at such instruments as those in the former category and that, within the meaning of the statute, appellant has "made" such an instrument. Assuming *arguendo* that he did not "make" this instrument, it is clear that he has altered a false instrument in a material way. The alteration is false in that it appears to create *new*, yet false, legal effects, further compounding the falsity of the original instrument.

Under either analysis we urge this Court to hold that appellant has falsely made or altered a writing within the plain meaning of 22 D.C. Code § 1401.

II. The trial court did not err in finding that appellant had made a genuine and knowing waiver of his rights.

(Tr. 57-58, 61-80, 86, 119, 141-142)

The trial judge found that appellant made a genuine and knowing waiver of his rights under *Miranda* v. *Arizona*, 384 U.S. 436 (1966) (Tr. 75). This finding should not be disturbed if it has substantial support in the record. *United States* v. *McNeil*, 140 U.S. App. D.C. 3, 433 F.2d 1109 (1969). The record in this case contains substantial support for the trial judge's finding.

Appellant's rights were twice read to him.[6] Twice appellant acknowledged understanding his rights (Tr. 58, 68). Officer Clayton afforded appellant the opportunity to call an attorney (Tr. 63). Appellant did not call an attorney but did make a telephone call to a personal friend (Tr. 66). Appellant's physical state was normal (Tr. 73-74). No promises were made to induce any statement.[7] There was no evidence of coercion or trickery. There was no lengthy interrogation. Few questions were asked, none of them leading.[8] The trial judge was aware that appellant was not unfamiliar with criminal procedure (Tr. 86).[9]

The trial judge was in a position to observe the demeanor and bearing of the police officers who interviewed appellant. Intangibles such as their apparent honesty, their sincerity or insincerity in desiring to secure appellant's rights and their personality traits were

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[6] Although Officer Clayton did not specifically state that he read from a Form PD-47 in advising appellant of his *Miranda* rights, (Tr. 62), Detective Stern did (Tr. 57). There is no contention on this appeal regarding the substantive sufficiency of the warnings given to appellant.

[7] After the hearing and after the statements were admitted, appellant denied making the oral statement and claimed that the written statement was made as a result of a promise of leniency (Tr. 119). It is not clear why this evidence was not presented to the trial judge prior to his ruling on admissibility. Nevertheless, it is manifest that if this latter testimony had been believed by the trial judge, he would have reversed his earlier ruling. The trial judge was especially sensitive to the rights of appellant (see, *e.g.*, Tr. 86, where the use of appellant's extensive prior criminal record was forbidden to the prosecutor), and the matter was submitted to the jury under proper instructions regarding the use of the statements (Tr. 141-142).

[8] In *United States* v. *Hayes*, 385 F.2d 375 (4th Cir. 1967), *cert. denied*, 390 U.S. 1006 (1968), leading questions were held not to vitiate a finding of waiver, but the court indicated that little evidentiary weight should be given to the answers.

[9] In *Johnson* v. *Zerbst*, 304 U.S. 458 (1938), the Supreme Court indicated the appropriateness of considering the background and experience of an accused in determining whether he has validly waived his constitutional rights.

displayed to the trial judge. After considering all this evidence, the trial judge obviously found a genuine and knowing waiver to be implicit in appellant's responding to the few questions put to him and in writing out the requested statement. It cannot be said, we submit, that this finding lacks substantial support.[10]

CONCLUSION

WHEREFORE, appellee respectfully submits that the judgment of the District Court should be affirmed.

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[10] This Court in *United States* v. *McNeil*, *supra*, upheld a determination of waiver on evidence indicating that the reading of rights to the accused was followed by an immediate question and answer. Substantial support for the trial court's finding of a valid waiver was found essentially in the presence of those factors outlined above, which were also present in appellant's case.

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UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

UNITED STATES OF AMERICA	)	
	)	
v.	)	CASE NO. 24,884
	)	Criminal No. 1102-69
CHARLES R. CHAMBERS	)	
	)	
Appellant	)	

APPELLANT'S REPLY BRIEF

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ARGUMENT

SIGNING ONE'S OWN GENUINE SIGNATURE FOR PURPOSES OF IDENTIFICATION AND ORIGINAL ENDORSEMENT DOES NOT CONSTITUTE THE CRIME OF FORGERY REGARDLESS OF THE FALSITY OF THE INSTRUMENT ENDORSED

In supporting its position that the defendant committed forgery by signing his own genuine signature as an endorsement on a bank check made payable to him, the Government has resorted to a form of syllogistic reasoning which, while artfully conceived, falls far short of establishing such conduct as forgery under 22 D. C. Code 1401. In this regard, there is a substantial gap between the facts established at the time of trial and the elements of the crime of forgery which the strained logic of the Government fails to bridge.

At the outset, it is significant to note that the Government has been unable to cite a single case in which a person has been found guilty of forgery on the basis of signing his genuine signature to an instrument on behalf of himself where there is no evidence establishing that the defendant participated in any other way in the making of the false instrument. In the absence of such precedent, the Government has attempted to "synthesize" established variations of the more classical form of forgery (such as forgery by trick and misrepresentation of agency) into a broad new concept of forgery. As

there are other enacted statutes which are ample enough to protect against fraud and false statements (such as uttering and false pretenses) it appears that little purpose can be served by generalizing the scope of forgery beyond that which is so precisely set forth in the language of the statute.

Examining the authorities used by the Government in its attempt to expand upon the definition of forgery, it becomes clear the extent to which they are distinguishable from the present case. In this regard, the Government cites the case of United States v. Tommasello, 160 F.2d 348 (2nd Cir. 1947) as standing for the proposition that it is forgery to sign one's own name to a false instrument even though there is no intent that the name be taken as that of another individual. In fact, the conviction in that case was based upon the defendant knowingly issuing a false prescription for narcotics and he was charged and convicted of making a false prescription. The issue did not involve the defendant's signature on the prescription but rather the contents of the document itself. The Court stated at page 349:

> "Such a paper was not a real prescription but a counterfeit."

The case was not decided upon the question presented here and has no application to the issue on this appeal.

The Government further relies upon the case of Lieberman v. United States , 102 U.S. App. D.C. 310, 253 F.2d 46 (1958) citing it for the proposition that this Court has broadly defined the offense of forgery; however, that case involved a very special element of the crime known as forgery "by trick" which once again has no application to the present case.

Viewing this matter from a different perspective reveals cases setting forth in considerable detail the proposition that the term forgery has a very precise statutory definition which involves genuineness of execution rather than falsity in the representation of facts contained in the document. This principal was clearly announced in the case of Gilbert v. United States, 82 S. C. 1399, cited in defendant's original brief in this case. The Gilbert decision also contains an historical summary of the common law as it pertains to forgery which further supports the proposition that endorsement of one's own name does not constitute forgery.

Courts have dealt with fact situations similar to those presented here by putting the alleged crime in the context of the uttering portion of the statute generally referred to as the forgery statute. An example is the case of Jolly v. United States, 411 F.2d 618 (9th Cir. 1969) involving a defendant who took a check to the bank where he stated the payee had asked him

to cash the check. He endorsed his own name and collected the money. The court, in viewing the elements of this offense, stated in its conclusion as follows at page 619.

> "It was the common variety of an offense where appellant endorsed his own name to cash the check, well knowing the prior endorsement had been forged. He did just what he was charged with, uttering a forged check, knowing the endorsement has been forged."

This was recognized as falling beyond the scope of forgery but within the elements of the offense known as uttering. This distinction should not be blurred but must be retained to carry out the clear intention of the statute.

CONCLUSION

On the basis of the foregoing, it is respectfully submitted that when, as in this case, an individual signs his genuine signature on his own behalf as an endorsement on a check made payable to him and does not represent the signature to be anything other than his own the crime of forgery has not been committed.

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